Supreme Court, U.S.
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No. 92-1280

IN THE

Supreme Court of the United States

1993 TERM

BETTY ANN LAWS,

Petitioner,

vs.

DEWEY WHITE

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

The question presented for review by Petitioner Laws is more clearly stated as follows:

> In a § 1983 action, should the Plaintiff be entitled to an inference of Defendant's personal involvement in a plan or scheme to harass Plaintiff for exercising her constitutional rights, based solely upon the Defendant's supervisory status as a public official and unrelated participation in town government.

PARTIES TO THE ORIGINAL PROCEEDINGS

A. Petitioner-Original Plaintiff (Appellant in Seventh Circuit):

BETTY ANN LAWS

B. Respondent-Original Defendant (Appellee in Seventh Circuit):

DEWEY WHITE, in his official capacity as Trustee of the Town Board of Rockville and as Chief of Police Department and individually

C. Additional Original Defendants:

ROCKVILLE TOWN BOARD OF TRUSTEES: DONALD C. SWAIM, RONALD D. MATTHEWS, WILLIAM D. BROWN, RICHARD DEPLANTY, and KENNETH NORMAN, in their official capacity as Trustees and individually; PAULA PETERSON, LARRY GOOCH, and MONTY BLACK, in their official capacity as Trustees only; STANLEY SKELTON, in his official capacity as Town Superintendent and Building Inspector and individually; ROCKVILLE BOARD OF ZONING APPEALS, in their official capacity as members of the Board of Zoning Appeals; and DEWEY WHITE, in his official capacity as Trustee of the Town Board of Rockville and as Chief of Police Department and individually

The District Court made an express determination there was no just reason for delay and expressly directed the entry of judgment under Rule 54(B). The nature of the claims remaining to be decided by the District Court are set forth in the Court's Entry dated April 24, 1990, and contained on pages A-27 through A-39 of the Appendix to Laws' Petition for Writ of Certiorari.

D. Hereinafter the Petitioner will be referred to as "Laws" and the Respondent will be referred to as "White".

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STATEMENT OF THE CASE

Upon retiring to a log cabin on Primrose Lane in the Town of Rockville, Indiana, Betty Ann Laws became embroiled in various disputes with her neighbors and local officials in town government. Beginning in 1979, Laws insisted a local zoning ordinance excluded the mobile homes her next-door neighbors had parked on their property. In 1981, Laws brought suit in state court against her neighbors and various local officials including the Rockville Board of Trustees, which at the time included Dewey White. See *Laws v. Lee*, 471 N.E.2d 1229 (Ind. App. 1984). In early 1982 White resigned his position as Trustee and became Police Chief. He was generally active in local

affairs and generally aware of Laws' interactions and displeasure with local government and citizens.

To get evidence on her claims of improper acts, Laws went around town photographing activities of which she disapproved. In August, 1982, Laws was next door at the McKinneys' property taking pictures, to which some people parking their trailers objected — so much so the McKinneys called the police for assistance. Officer Bollinger responded to the radio call, received through the Sheriffs Dispatcher Office. A group had collected and some persons threatened to hurt Laws if she did not stop taking pictures of them. Officer Bollinger told those persons to go home. He then told Laws that if she was on her neighbors' property taking pictures, over their objections, she would be trespassing. He did not threaten to file any charges.

Then in October, 1982, Officer Shannon responded to a radio call made to the Sheriffs Dispatcher Office, in which the same neighbors complained that Laws was taking pictures of them when they went out of their house or passed by a window. When Officer Shannon approached Laws, she said that she was taking pictures for evidence in a lawsuit. Shannon told Laws that taking pictures of people in their backyard was harassment, and she should cease taking pictures of her neighbors' activities while they were on their own property. He did not threaten to file any charges against Laws.

During this time period and later, Laws had various other encounters with local officials, none of which involved White or the police. Finally, in June of 1986, Laws filed the underlying suit against a number of local officials, complaining of a continuing pattern of harassment and retaliation, of which the two police incidents were allegedly a part. Laws contends that because White was active in local government and community affairs, formerly named as a trustee defendant in her zoning suit, was Police Chief, and was generally adverse to her, an inference can be drawn that police officers Shannon and Bollinger tried to hamper her picture-taking as part of a plan or

scheme in which White knowingly conspired to violate Laws' constitutional rights.

Defendant White contends that such an inference is entirely speculative and insufficient evidence upon which the jury could properly find a verdict for Laws. In moving for summary judgment, defendant White submitted his affidavit along with that of the two police officers, Jack Shannon and Charles Bollinger. White stated he did not give any directives or orders to Officers Bollinger or Shannon, nor to any other law enforcement officer, that they should contact or confer with Laws to order her to cease taking pictures for evidence in any lawsuit, or for any other purpose, or to discuss same with Betty Ann Laws; nor was he aware at the time of the McKinneys' complaints and did not direct any response to those complaints. Both Officer Shannon and Bollinger stated that they were not ordered or directed by Police Chief White nor any other official, to contact Laws regarding her taking photographs or any other matter. Both officers stated that they responded to citizens' requests for assistance coming through the radio dispatch.

Laws errs in suggesting that she was photographing only real property, outside her neighbors' presence. She also errs in stating White and the police officers admit there was no legal prohibition to Laws taking pictures of her neighbors over their protest. White contends that the district court could have properly granted summary judgment in his favor on the independent ground that Laws was not deprived of any rights secured by the Constitution and laws of the United States, since she had no constitutional right to photograph her neighbors over their objection. Additionally, White is qualifiedly immune from liability.

The district court judge properly found, based upon the uncontroverted facts, that Laws had failed to show that the two picture-taking incidents were part of an alleged campaign of harassment against her. The district court also properly found that there was insufficient evidence to link Bollinger's and Shannon's actions to an alleged "official custom" that resulted in

a pattern of harassment. Laws failed to provide the sufficient link to show White was involved in, knew about, or was indifferent to the actions of his officers, therefore summary judgment was proper.

ARGUMENT

In order to prevail on her § 1983 claim, initially Laws must show as part of her prima facie case White's personal involvement in the alleged police incident. Laws attempts to do so by pointing to White's status as police chief, his interest in the zoning litigation, his active involvement in Rockville government, and her various conflicts with that government. From these facts, Laws proposes a jury could reasonably conclude that White directed or caused the police officers to appear and confront Laws, to thwart her picture-taking activities.

White submits that such an inference would be unreasonable, illegitimate, and speculative, thus insufficient to support a jury verdict in favor of Laws, even without the affidavits of White, Shannon and Bollinger, which completely foreclose the possibility that White was involved in the alleged police harassment.

Federal courts do not follow the rule that a scintilla of evidence is enough. Rather, the question is whether there is evidence upon which the jury could properly find a verdict for that party. Whether the evidence is sufficient to create an issue of fact for the jury is solely a question of law to be determined by the court.

White came forward with affidavits altogether negating any involvement in the two picture-taking incidents. The burden then shifted to Laws to come forward with sufficient evidence upon which a jury could find some involvement connecting White with the alleged pattern of harassment. Laws had no such evidence, therefore proposed the connection be based upon an inference of involvement arising from White's status as police chief and unrelated involvement in local government.

The trial court held such an inference to be speculative and insufficient, as a matter of law. The Court of Appeals affirmed. Laws now asks the Supreme Court to consider whether in its view the inference is reasonable and sufficient. This invitation to reconsider the reasonableness of the inference should be rejected.

Laws' petition fails to meet any of the general or specific considerations governing review on writ of certiorari, as set forth in Supreme Court Rules, Rule 10. The United States Supreme Court cannot function as an ordinary appellate court concerned with achieving individual justice in individual cases. It is believed clear from the record that justice has been achieved by summary judgment in White's favor. If not, the result is particular to Laws, and reversal will not have widespread general impact.

This court has already determined that under proper circumstances a reasonable inference may be used to support a §1983 action. *Adickes v. Kress*, 389 U.S.144, 90 S.Ct. 1548 (1970). The issue presented by petitioner Laws, whether the inference she proposes is reasonable under the circumstances, is not of sufficient magnitude to invoke certiorari jurisdiction under applicable discretionary rules. No doubt, the actions of two police officers, each on separate occasions, in coming to Laws' residence in response to her neighbors' complaints about her picture-taking, made life uncomfortable for Laws — just as Laws' picture-taking made life uncomfortable for her neighbors. Nevertheless, Laws continued to take all the pictures she wanted as evidence in her zoning dispute and other matters.

The within case differs from *Adickes v. Kress*, supra, where summary judgment was held improper because the respondent-defendant failed to carry its burden of showing the absence of any genuine issue of fact, by failure to foreclose the possibility that there was in fact a policeman in the Kress store while petitioner was awaiting service, and that this policeman reached an understanding with some Kress employee that

petitioner not be served. In *Kress*, the petitioner proposed an inference arising from a specific sequence of events. Here, Laws proposed an inference that seemingly unrelated events are in fact related, despite the lack of evidence showing a link.

Thus, Laws does not present any sequence of events or evidence linking Police Chief White with the two incidents where Officers Shannon or Bollinger confronted Laws regarding her picture-taking. Laws' suggestion of motive (to prevent Laws from gathering evidence to be used in the zoning suit) does not supply the necessary link. First, Laws' zoning suit was pending against White solely in his capacity as a Rockville Trustee, and upon his resignation from the Board of Trustees, White had no personal interest in Laws' zoning suit. Moreover, the existence of the proposed motive is itself based on mere speculation.

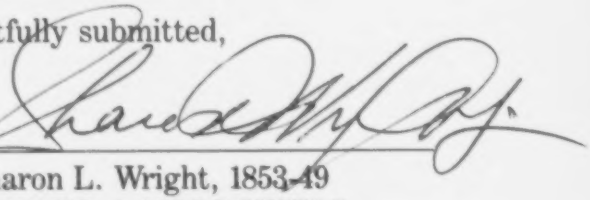
Additionally, in her petition for writ of certiorari, Laws purposely ignores the undisputed fact that on both occasions the police officers came to her residence in response to requests from her neighbors for police assistance. While it may be difficult for Laws to understand why two police officers, on two separate occasions, would demand that she cease photographing her neighbors, we need not speculate that Police Chief White sent these officers to hamper Laws in gathering information for her zoning suit. Rather, the evidence is clear and undisputed that these two police officers were called by the neighbors to resolve a local dispute.

Moreover, any speculation that Officers Bollinger and Shannon were acting on White's "feelings and attitudes" toward Laws, abusing their authority in the uniform, is completely and totally unsubstantiated by any evidence, including inferences. The police function in our society to resolve disputes among neighbors, where possible, according to their good faith understanding of the law and their powers of enforcement. The McKinneys had a right to call the police in an attempt to stop what they considered an invasion of their privacy by Laws'

picture-taking, and the police attempted to resolve the dispute by telling Laws not to take pictures of her neighbors over their objections. No inference can be drawn that White had some personal involvement or participation in these incidents simply because he is police chief and active in local government, nor is it reasonable to assume the officers responded as they did as part of some grand scheme to harass Betty Ann Laws, rather than in a good faith effort to keep the peace.

WHEREFORE, respondent Dewey White prays this Court deny Laws' Petition for Writ of Certiorari.

Respectfully submitted,

BY: 

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